IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

COMPANY PETITION NO. 58 OF 2007

M/s. Volgadelite Plastic Udyog Pvt. Ltd. ... Petitioner.

V/s.

M/s. Ram India Consumer Product Pvt. Ltd. ... Respondent.

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Mr. G.B. Kedia for the Petitioner.
None for the Respondent.

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CORAM : DR. D.Y.CHANDRACHUD,J.

05th April 2007.

P.C. :

. Counsel appearing on behalf of the Petitioner has produced a copy of the acknowledgment issued by the Company in token of service of the Company Petition and undertakes to file an affidavit on or before 10th April 2007. The statement is accepted.

2. The Company Petition arises out of a supply effected by the Petitioner to the Company of laminators for oil sachets between the period 27th March 2006 and 17th May 2006 under 3 invoices amounting to Rs.3,57,437/-. In addition, the

Petitioner has also incurred expenses in the amount of Rs.31,571/- towards cylinders used for processing the printing materials in accordance with the order placed by the Company. At Exhibits A,B and C are copies of the invoices and at Exhibits D and E are copies of the debit notes issued by the Petitioner towards the cost of the cylinders. The Company utilized the material without disputing the price, quality and quantity. In part-payment of the liability, the Company issued 3 cheques in the amount of Rs.1,50,000/- which were dishonoured on presentation by the Bank. A statutory notice was issued by the Petitioner to the Company on 25th August 2006. Upon receipt of the statutory notice, the Company by its reply dated 16th September 2006 forwarded an amount of Rs.1,50,000/- which was duly realised. The Company has, however, disputed its liability to pay the balance interalia on the ground that the goods supplied were not useful for packing and the Company has sustained a loss on that account. The Petitioner has responded to the allegation of the Company on 4th November 2006.

3. The Company has not entered appearance despite service and has not filed a defence to the Company Petition. Prima-facie, the defence that the goods were defective is only an afterthought since no dispute was raised by the Company about the goods that were sold, supplied and delivered until a statutory notice of winding up was issued. In the circumstances, the following conditional order is passed.

(i) The Company shall within a period of 4 weeks from today deposit an amount of Rs.1,49,233/-, being the principal amount due under the 3 invoices as per the particulars of the claim, (Exhibit N), with the Prothonotory and Senior Master;

(ii) Upon intimation to the Advocate of the Petitioner that the Company has effected a deposit in terms of clause (i), the Petitioner undertakes to file a suit for the recoveries of its outstanding dues together with interest. Upon the institution of the suit, the amount deposited by the Company in terms of clause (i) shall lie to the credit of the suit and abide by the final decree

that may be passed in the suit;

(iii) The amount upon deposit shall be invested by the Prothonotory and Senior Master in a fixed deposit of a Nationalised Bank initially for a period of 6 months to be renewed periodically thereafter subject to such directions as may be passed by the appropriate Court inter alia on any application which may be moved on behalf of the Petitioner;

(iv) In the event that there is any failure on the part of the Company to deposit the amount as directed in clause (i) within the period stipulated, the Petition shall stand admitted;

(v) Upon the consequence envisaged in clause (iv) arising the Petitioner to advertise the Petition in 'Free Press Journal', 'Nav Shakti' and in the Maharashtra Government Gazette. The Petitioner to deposit Rs.10,000/- with the Prothonotory and Senior Master towards publication charges, within 4 weeks of the admission of the Petition.